



Virginia  
Regulatory  
Town Hall

Periodic Review and  
Notice of Intended Regulatory Action  
Agency Background Document

<b>Agency Name:</b>	Virginia Employment Commission
<b>VAC Chapter Number:</b>	16 VAC 5-80
<b>Regulation Title:</b>	Adjudication
<b>Action Title:</b>	Review & Pre-NOIRA
<b>Date:</b>	June 28, 2000

This information is required pursuant to the Administrative Process Act § 9-6.14:25, Executive Order Twenty-Five (98), and Executive Order Fifty-Eight (99) which outline procedures for periodic review of regulations of agencies within the executive branch. Each existing regulation is to be reviewed at least once every three years and measured against the specific public health, safety, and welfare goals assigned by agencies during the promulgation process.

This form should be used where the agency is planning to amend or repeal an existing regulation and is required to be submitted to the Registrar of Regulations as a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B).

Summary

*Please provide a brief summary of the regulation. There is no need to state each provision; instead give a general description of the regulation and alert the reader to its subject matter and intent.*

Establishes the procedures to be followed for adjudicating contested claims for benefits at the deputy, first level appeals, and commission review stages; authorizes designated employees to administer oaths and issue subpoenas.

Basis

*Please identify the state and/or federal source of legal authority for the regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or*

discretionary. Where applicable, explain where the regulation exceeds the minimum requirements of the state and/or federal mandate.

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Sections 60.2-111 and 623 of the Code of Virginia.

### Public Comment

*Please summarize all public comment received as the result of the Notice of Periodic Review published in the Virginia Register and provide the agency response. Where applicable, describe critical issues or particular areas of concern in the regulation. Also please indicate if an informal advisory group was or will be formed for purposes of assisting in the periodic review or development of a proposal.*

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One comment was received regarding the approval of claimants attorney's fees. Language is being considered to address the concerns expressed in this comment. No informal advisory group was or will be formed for purposes of assisting in the periodic review or development of a proposal.

### Effectiveness

*Please provide a description of the specific and measurable goals of the regulation. Detail the effectiveness of the regulation in achieving such goals and the specific reasons the agency has determined that the regulation is essential to protect the health, safety or welfare of citizens. In addition, please indicate whether the regulation is clearly written and easily understandable by the individuals and entities affected.*

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#### GOALS

To provide fair, impartial, prompt, and accurate decisions of disputed claims by ensuring that:

1. 87% of all first payments will be made within the first 14 calendar days following the first compensable week claimed;
2. 75% of all deputy determinations selected for review shall achieve a passing grade on the federal quality review mandated by the U. S. Department of Labor;
3. 60% of all first level appeals decisions shall be mailed within 30 calendar days of the date of appeal, and 85% shall be issued within 45 calendar days.
4. 90% of all first level appeals decisions selected for review shall achieve a passing grade on the federal quality review mandated by the U. S. Department of Labor; and
5. 50% of all commission-level decisions shall be mailed within 45 calendar days of the date of appeal, and 80% shall be issued within 75 calendar days.

EFFECTIVENESS FOR CALENDAR YEAR 1999

1. 93.1% of all first payments were made within the first 14 calendar days following the first compensable week claimed.
2. 77.3% of all Deputy determinations selected for review achieved a passing grade on the federal quality review mandated by the U. S. Department of Labor.
3. 84% of all first level appeals were mailed within 30 calendar days of the date of appeal. 95% were issued within 45 days.
4. 100% of all first level appeals decisions selected for review achieved a passing grade on the federal quality review mandated by the U. S. Department of Labor.
5. 63.8% of all Commission-level decisions were mailed within 45 calendar days of the date of appeal, and 94% were issued within 75 calendar days.

It is imperative that the agency promptly and fairly adjudicate disputed claims to meet or exceed the mandatory qualitative and promptness criteria established by the United States Department of Labor. The regulation is easily understandable and well written. It protects the health, safety and welfare of the citizens of the Commonwealth by ensuring that decisions are prompt and fair.

Federal and state law mandate that the agency allow a fair hearing in disputed benefit cases. This regulation helps to ensure that all parties receive a fair and impartial hearing. The Unemployment Insurance Program is a significant benefits program paying several hundred million dollars to displaced workers annually. This regulation ensures that this government function is administered fairly, consistently, and effectively.

**Alternatives**

*Please describe the specific alternatives for achieving the purpose of the existing regulation that have been considered as a part of the periodic review process. This description should include an explanation of why such alternatives were rejected and this regulation reflects the least burdensome alternative available for achieving the purpose of the regulation.*

The agency considered many alternatives during the review process including expanding the use of telephonic hearings at both lower and higher level appeals hearings, allowing parties to file appeals via facsimile and over the Internet, and making it more convenient for parties to conduct business with the agency. This regulation should be amended to reflect these changes.

**Recommendation**

*Please state whether the agency is recommending the regulation be amended or terminated and the reasons such a recommendation is being made.*

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The agency recommends that this regulation be changed to allow better use of technology.

**Substance**

*Please detail any changes that would be implemented.*

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The agency recommends that this regulation be amended to allow parties to file appeals by facsimile and over the Internet, and to allow expanded use of telephonic hearings. Also, the agency recommends that a 10-day notice of hearing be required for both lower and higher authority, that language establishing the criteria for the approval of attorney's fees to lawyers representing claimants be added, that language prohibiting ex-parte communications with presiding hearing officers be added, that the language regarding transcripts be modified to make it consistent with Section 60.2-623 of the Code of Virginia, that a provision be added to establish criteria for when the Commission would reconsider a decision pursuant to Section 60.2-630 of the Code of Virginia and that a provision be added regarding rescission of a withdrawal by a party.

**Family Impact Statement**

*Please provide a preliminary analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

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The changes recommended to this regulation will positively affect the family and family stability. It will allow parties to interact more effectively with the agency by phone and the Internet, and will require less face to face interaction with the agency, allowing Virginians more time with their families. This will likely reduce travel and child care expenses. Also, the agency will be more accessible to all Virginians.